IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS --
HOUSTON DIVISION

LEALEM MULUGETA, Plaintiff, v. **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, CHARLES F. BOLDEN, JR., Administrator, and UNIVERSITIES SPACE RESEARCH ASSOCIATION,** Defendants.	Civil Action No. 4:16-cv-03593 Jury Trial Demanded

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT:

LEALEM MULUGETA ("Mulugeta" or "Plaintiff") complains of **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION** ("NASA"), **CHARLES F. BOLDEN, JR.**, Administrator, ("Bolden") and **UNIVERSITIES SPACE RESEARCH ASSOCIATION** ("USRA") (collectively referred to herein as "Defendants"), and for causes of action against it would show the Court as follows:

1. INTRODUCTION

1.1. This is a case alleging racial and national origin discrimination, retaliation, and hostile work environment under Title VII of the Civil Rights Act ("Title VII") and 42 U.S.C. § 1981 and interference and retaliation under the Family Medical Leave Act ("FMLA").

1.2. Plaintiff demands a JURY TRIAL in this case as to any and all issues triable to a jury.

1.3. This action seeks, among other things, economic, compensatory, liquidated, and punitive damages, attorney's fees, expert witness fees, taxable court costs, expenses, and pre-judgment and post-judgment interest.

2. PARTIES

2.1. **LEALEM MULUGETA** was a resident of Houston, Texas. At all pertinent times he was a resident living within the Southern District of Texas.

2.2. Defendant **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION** is an agency of the Federal Government of the United States doing business in the State of Texas and service should be made on the Chief Counsel, General Law Practice Group, NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058.

2.3. Defendant **CHARLES F. BOLDEN, JR** is the Administrator of NASA and service should be made care of the Chief Counsel, NASA Headquarters, 300 E St SW, Washington, DC 20546**.**

2.4. Defendant **UNIVERSITIES SPACE RESEARCH ASSOCIATION** is a domestic corporation doing business in the State of Texas and service should be made on C T CORPORATION SYSTEM, 1999 Bryan St., Ste. 900, Dallas, Texas 75201**.**

2.5. Defendants jointly employed Mulugeta. USRA was Mulugeta's titular employer, issued Mulugeta his pay, and issued Mulugeta his benefits, with funding approved by NASA. Mulugeta's NASA Civil Servant supervisors approved and directed all of his professional activities regarding his work on the NASA Digital Astronaut Project and assigned his daily work schedule. See also Section 5, *infra.*

3. JURISDICTION AND VENUE

3.1. This action arises, in part, under the United States Constitution, particularly the Fourteenth Amendment and the subsequent remedial legislation enacted pursuant thereto, as codified at 42 U.S.C. §§ 1981, 1988 and 2000(e), *et. seq*.

3.2. This action also arises, in part, under the FMLA, codified in 29 U.S.C. § 2601, *et seq.*

3.3. Venue is proper in this District because Defendant's acts and omissions that give rise to Plaintiff's claims were committed in part in the Southern District of Texas.

3.4. Accordingly, this Court possesses jurisdiction under 28 U.S.C. §§ 1331, 1343, 42 U.S.C. §§ 1981, 1988 and 2000(e), *et. seq.*, and 29 U.S.C. § 2601, *et seq.*

4. PROCEDURAL REQUISITES

4.1. To the extent necessary, all conditions precedent have been exhausted and/or performed prior to the filing of this Complaint.

4.2. With respect to the Title VII claims, Plaintiff timely filed Charges of Discrimination against Defendants with the Office of Diversity and Equal Opportunity ("ODEO") and the Equal Employment Opportunity Commission ("EEOC").

4.3. Plaintiff received Notice of Right to Sue ("RTS") letters from the ODEO and the EEOC.

4.4. This lawsuit has been filed within the required time period after the aforementioned RTS letters were issued to Plaintiff

4.5. Exhaustion is not required under 42 U.S.C. § 1981 and the Family Medical Leave Act.

5. FACTS

5.1. Mulugeta, an African male from Ethiopia, was employed by NASA and USRA from April 2009 through September 2015.

5.2. Mulugeta was hired by USRA to work for NASA's Digital Astronaut Project ("DAP"). USRA issued Mulugeta his pay and benefits with funding from NASA.

5.3. Mulugeta's direct supervisor at the time of his termination was NASA Civil Servant and Manager David Baumann ("Baumann").

5.4. While employed at USRA and NASA, Mulugeta suffered from and endured shocking discrimination, disparate treatment and a persistent and pervasive hostile work environment.

5.5. The first examples of the discrimination occurred between April 2009 through November 2009. NASA's badging office treated Mulugeta differently than non-Ethiopian employees or visitors. Mulugeta experienced intense and undue scrutiny, in which NASA staff would monitor him in pairs, while other Caucasians and Caucasian foreign nationals (e.g. British citizens) were not scrutinized. Mulugeta was repeatedly characterized as and questioned about being Muslim based on his name and national origin, despite the fact that Mulugeta is not Muslim. Mulugeta experienced hostility from NASA staff when he asked questions about his rights and sought explanations about race and ethnicity questions during the badging process. In short, Mulugeta felt as though he were being treated like a suspected terrorist due to the color of his skin and his race.

5.6. From August 2009 to October 2009, Mulugeta complained to NASA Civil Servant Nick Skytland that his salary was disparately low, that it was not what he was promised, and that it was lower than his pay as an intern, despite having several years of experience, exemplary performance, and a Masters degree. After these complaints, Mulugeta's salary was adjusted, but still remained below the median salary for his position by approximately $10,000 per annum. This discriminatory pay differential was never corrected.

5.7. Shortly after obtaining his permanent badge on November 4, 2009, Mulugeta encountered Alicia Llewellyn, a contractor for NASA who notified him that during the badging process, he served as a "great example" and "profile" for extra scrutiny because of his race, place of birth, and unusual name.

5.8. The discrimination against Mulugeta at NASA continued. NASA and USRA assigned Civil Servant and DAP Project/Lead Scientist Dr. Steve Platts ("Platts") to supervise Mulugeta's work. From October 2010 to April 2011, Platts was abusive to Mulugeta, and told him "you're practicably my slave." When Mulugeta complained, Platts told him "I can abuse you all I want" and Platts also threatened him, saying Mulugeta should be careful, because "if I wanted, I can have you fired."

5.9. In the midst of several changes taking place within the DAP, NASA Civil Servant Brad Rhodes ("Rhodes") invited Mulugeta to serve as a Project Engineer for a Biomedical Technology Development program he was running. In the process, Rhodes made an inquiry to about Mulugeta's salary. Following this, on or about December 17, 2010, Rhodes let Mulugeta know around that he was surprised at how low Mulugeta's salary was. Subsequently, Rhodes advocated to have Mulugeta's salary adjusted, but the efforts were resisted and minimal action was taken by USRA or NASA.

5.10. In April 2011, Mulugeta was promoted to be the Lead Scientist of the DAP. Given the significant increase in responsibility, Mulugeta requested that he be compensated appropriately. Mulugeta provided data from Salary.com and available data about the compensation ranges for similar positions. However, the increase Mulugeta received was below the industry median by more than $40,000. Moreover, Mulugeta did not receive retroactive pay for the months he held the position at the lower salary.

5.11. Mulugeta continued to experience discrimination and disparate treatment even once he was promoted to Lead Scientist. On May 23, 2011, Mulugeta met NASA Civil Servant

Dr. DeVon Griffin ("Griffin"). Griffin warned Mulugeta that if anyone "does not work well with him," he will do "everything in his power to make their lives miserable." As far as Mulugeta is aware, Griffin never made such statements to anyone else.

5.12. Furthermore, in another example of disparate treatment, Griffin and Marsha Nall ("Nall"), another NASA Civil Servant, repeatedly told Mulugeta that he was not allowed to talk to Baumann, his direct supervisor, or any other NASA managers unless Griffin and Nall were involved in the conversation. In all of Mulugeta's time at NASA and USRA, he has not seen any of his Caucasian counterparts being subjected that demand.

5.13. Baumann supported Griffin and Nall in their demand that Mulugeta not be allowed to speak to him independently. Mulugeta felt that they repeatedly treated him as if he was a piece of property – a slave who should do nothing but their bidding. Mulugeta did not witness any Caucasians treated this way.

5.14. Moreover, Griffin and Nall intentionally excluded Mulugeta from significant meetings where the DAP Team was scheduled to present the scientific work to NASA managers and external visitor to Glenn Research Center for which Mulugeta was responsible for leading. In addition to leading the scientific content of the project, Mulugeta was an active contributor to all of the technical content. Despite that, Mulugeta was never even allowed to present his own work in these meetings. Instead, NASA assigned one of the Caucasian scientists to present Mulugeta's work for him. Mulugeta complained many times to USRA Manager Dr. Neal Pellis ("Pellis") and Baumann, but this continued until the end, with the very last incident being on July 28, 2015. Even when Griffin was not managing the project, he deliberately went out of his way to instruct the acting DAP Project Manager to reverse an invitation the Acting Project Manager extended to

Mulugeta to present his work to upper management. Consequently, the Acting PM had to present the work on Mulugeta's behalf even though she had less knowledge about it.

5.15. On or about November 15, 2011, Mulugeta complained to NASA Civil Servant Judith Hayes ("Hayes") about being treated unequally. Hayes said "you just need to become a US Citizen." This was not only a clear admission of the underlying discrimination, it is also an attempt to legitimize the discrimination and blame the victim.

5.16. In August 2013, Mulugeta further complained to USRA Human Resources Director Jeanette Gardner ("Gardner") about his discriminatory compensation. Once again, Mulugeta continued to receive substandard compensation.

5.17. On or about November 19, 2014, Mulugeta complained to Pellis that Griffin and Nall continued to discriminate against him and that he had been threatened. Two days later, Griffin falsely accused Mulugeta of releasing Federally Embargoed information, only to later retract the accusation after it was shown that Mulugeta took no part in the release. Griffin later informed Mulugeta that he was accusing Mulugeta of another matter for which he had no evidence, but Mulugeta had full record of the series of events that proved that once again, he was above recrimination.

5.18. On or about December 11, 2014, Baumann, Griffin, Nall and Dr. Peter Norsk ("Norsk") forced Mulugeta to participate in a meeting where he explicitly told them that he did not feel safe discussing these issues with Griffin and Nall present due to their continual and repeated acts of discrimination and retaliation. Baumann told Mulugeta that "this is as safe of an environment as you will ever have."

5.19. Following the meeting, tremendous pressure was placed on Mulugeta to move to the Johnson Space Center ("JSC") campus though Mulugeta repeatedly stressed to Baumann, Hayes, Pellis, Norsk, USRA Human Resources and others that he did not feel safe being forced to move where the very people who were violating his rights were housed.

5.20. From February 18 to March 10, 2015, Mulugeta sought and obtained medical leave at the instruction of his doctor due to the significant stress induced by the continuing discrimination, hostile work environment, and retaliation he had experienced thus far.

5.21. As soon as Mulugeta returned from medical leave, he worked with Pellis to arrange a meeting with Hayes so that he could pursue his complaints about the discriminatory and hostile work environment. Mulugeta checked in regularly with Pellis and his administrative support staff to ensure the meeting would be scheduled. Pellis and his administrative support staff confirmed the meeting was scheduled with Hayes on March 30, 2015, at 1:00 PM.

5.22. When Mulugeta noticed that he did not receive an outlook invitation for the March 30 meeting with Hayes, he repeatedly inquired with Pellis and his administrative staff why he had not received the invitation. It was not until on the morning of March 30 that he was informed that Judith Hayes decided to exclude Mulugeta from the meeting. Instead, she was going to meet with Pellis and Baumann and Mulugeta was not invited to attend.

5.23. Mulugeta was deeply distressed by the news that that Judith Hayes had decided to deny him the opportunity to speak with her about the discrimination he was facing. On or about March 30, 2015, Mulugeta with NASA Civil Servant Jennifer Villarreal ("Villarreal") to discuss a project we were collaborating on. During this meeting Mulugeta pointed out at how he was being treated unfairly by many Civil Servants, and specifically pointed to the time Platts called Mulugeta a slave and told Mulugeta that he can have Mulugeta fired if he wanted to. Villarreal dismissed it, and she was promoted soon after this date to be Baumann's deputy. Thereafter, she also began discriminating and retaliating against Mulugeta in a similar fashion.

5.24. In March and April, Mulugeta complained to Pellis on several occasions that his concerns were being ignored. Again, no actions were taken by NASA or USRA.

5.25. Baumann made several active attempts to replace Mulugeta as the DAP Lead Scientist. Mulugeta raised this issue to Pellis and USRA Human Resources representative Sherri Burrow ("Burrow") on several occasions, and sent two emails on May 11, 2015 and 18, 2015 to Pellis and Burrow to this effect.

5.26. From May 2015 to July 2015, Mulugeta's health was again jeopardized by the discrimination, retaliation, and hostile work environment, and he was medically required to take FMLA leave. Mulugeta suffered from numerous episodes of migraines, anxiety attacks, depression and suicidal thoughts during this time.

5.27. While Mulugeta was on FMLA leave, NASA posted a job opening with his exact job description. Additionally, NASA forced Mulugeta to take on Dr. John DeWitt ("DeWitt") as a Deputy, even though he did not need one, and they assigned DeWitt exactly the same role as Mulugeta had so that Mulugeta could train DeWitt as a replacement.

5.28. On or about July 1, 2015, Mulugeta met with Hayes, Dr. Antony Jeevarajan ("Jeevarajan"), and Pellis. During this meeting Mulugeta complained of the fact that he was in a constantly hostile work environment and that he had been discriminated against, including being called a slave. Mulugeta did not feel that Hayes was taking his claims seriously. Specifically, Hayes made jokes about some of the situations which made him feel unsafe in the environment.

5.29. The next day, Mulugeta again met with Pellis to reiterate the fact that he was being discriminated against, by clearly pointing to how his rights were being violated without fear of recourse, including being called a slave. Instead of taking responsible and appropriate action, Pellis advised Mulugeta to refrain from claims of discrimination.

5.30. On July 8, 2015, Mulugeta complained to Burrow about the unending discrimination and retaliation. Burrow reacted by saying that USRA cannot fix NASA's underlying cultural problem and therefore, “we can try and adapt, survive, or ultimately move on elsewhere.”

5.31. Mulugeta was moved to an “office” that was never meant to be an office as it had sink, paper towel dispenser and a soap dispenser. Mulugeta developed tinnitus as a result of the noise conditions in this “office.”

5.32. On or about July 22, 2015, Mulugeta emailed Burrow outlining how NASA had not followed through with their promises and how they put him in a work space that looked more like a jail cell or a janitor’s closet, despite other unoccupied offices being readily available in the building. Mulugeta also emphasized to Burrow how his health continues to be compromised, and how he did not feel he was being treated with the dignity that any person deserves, let alone one of their Lead Scientists that has consistently produced high caliber work.

5.33. On or about August 20, 2015, Baumann fired Mulugeta as the DAP Lead Scientist, and announced to the whole team later in the day that Dr. Beth Lewandowski (“Lewandowski”) would be replacing him.

5.34. On August 25, 2015, USRA’s Human Resources Director Valerie Utsey (“Utsey”) notified Mulugeta that none of the protocols or paperwork required to terminate Mulugeta had been filed. However, instead of working with NASA to retract this retaliatory termination, USRA placed Mulugeta on administrative leave while the paperwork was filed ex-post-facto.

5.35. Lewandowski admitted to Mulugeta that she knew that Baumann, Griffin, and Nall had been plotting to fire him since July 2015. Lewandowski's admission evidences a casual connection between Mulugeta's open complaints of discrimination and requests for FMLA leave and Defendants' decision to terminate him.

5.36. Mulugeta was terminated from his employment with NASA and USRA in or about September 2015.

5.37. Subsequent to his termination, NASA continues to discriminate and retaliate against Mulugeta by interfering with his publishing rights, critically damaging his ability to appropriately further his career and professional reputation.

6. CAUSES OF ACTION

6.1. Plaintiff incorporates by reference all preceding facts as set forth in Paragraphs 5.1 through 5.37.

Unlawful Discrimination under 42 U.S.C. § 1981 and 42 U.S.C. § 2000(e), *et. seq*.

6.2. Defendants intentionally engaged in the aforementioned practices, policies, customs and usages made unlawful by 42 U.S.C. § 1981 and 42 U.S.C. § 2000(e), et. seq.

6.3. Plaintiff was (1) a member of a racial minority; (2) there was an intent to discriminate against him on the basis of race by Defendants; and (3) the discrimination concerns one or more of the activities enumerated in § 1981 and § 2000(e).

6.4. Plaintiff has suffered damages as a result of the discrimination.

Hostile Work Environment under 42 U.S.C. § 1981 and 42 U.S.C. § 2000(e), *et. seq*.

6.5. Plaintiff maintains a plausible inference that the discrimination was severe or pervasive enough to create a hostile work environment and that this discrimination occurred because of Plaintiff's race and/or national origin.

6.6. Plaintiff has suffered damages as a result of the hostile work environment.

Unlawful Retaliation under 42 U.S.C. § 1981 and 42 U.S.C. § 2000(e), *et. seq*.

6.7. Plaintiff (1) engaged in protected activity, (2) Defendants took adverse employment action against him; and (3) there is a casual connection between the protected activity and the adverse employment action.

6.8. Plaintiff has suffered damages as a result of the retaliation.

Unlawful Interference and Retaliation under 29 U.S.C. § 2601,

6.9. Plaintiff's medical leave of absence from work was protected under the FMLA, which provides that an employer must grant an employee up to twelve (12) workweeks of unpaid leave for, among other things, medical leave when the employee is unable to work because of a serious health condition of a parent, and because of the employee's own serious health condition.

6.10. Plaintiff was discharged in retaliation for taking federally protected leave under the FMLA, 29 U.S.C. §2601, *et seq*. It is unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. In addition, it is unlawful for any employer to discharge or discriminate against any individual for seeking leave under the FMLA.

6.11. Based on Defendants' conduct, it is liable to Plaintiff under the FMLA for interfering with his right to medical leave due to his serious health.

6.12. Based on Defendants' conduct, it is also liable to Plaintiff under the FMLA for retaliating against him for taking medical leave due to a serious health condition of a parent, her mother, and her own serious health condition.

6.13. Plaintiff has suffered damages as a result of the discrimination and retaliation.

7. DAMAGES

7.1. As a direct and proximate result of Defendants' conduct, Plaintiff suffered the following injuries and damages:

7.1.1. Lost wages in the past and future;

7.1.2. Lost health insurance and related benefits in the past and future;

7.1.3. Loss of pension or retirement benefits;

7.1.4. Reputational harms;

7.1.5. Emotional suffering in the past and future; and

7.1.6. Loss of enjoyment of life.

7.2. Plaintiff seeks injunctive relief and consequential damages based on Defendants' interference with his publishing rights and professional advancement.

7.3. Plaintiff seeks all economic and compensatory relief to which he may show himself justly entitled, punitive damages, liquidated damages, attorneys' fees, and costs of court.

8. ATTORNEY'S FEES

8.1. Defendants' action and conduct as described herein and the resulting damage and loss has necessitated Plaintiff retaining the services of SHELLIST | LAZARZ | SLOBIN LLP, 11 Greenway Plaza, Suite 1515, Houston, Texas 77046 to initiate and prosecute the above claims.

8.2. Plaintiffs seek recovery of reasonable and necessary attorney's fees under Title VII, 42 U.S.C. §2000e-5(k), 29 U.S.C. § 2601, *et seq.*, as well as 42 U.S.C. § 1988, and any another applicable law or statute.

9. PRAYER

9.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and answer, and that on final hearing of this cause, Plaintiff has the following relief:

9.1.1. General damages for Defendants' violations of 42 U.S.C. §§ 1981 and 2000(e), *et seq*; and 29 U.S.C. § 2601, *et seq.*

9.1.2. Pre-judgment interest at the highest legal rate;

9.1.3. Post-judgment interest at the highest legal rate until paid;

9.1.4. Back pay;

9.1.5. Front pay;

9.1.6. Compensation for any and all future pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of life or enjoyment of life, and other non-pecuniary losses;

9.1.7. Damages for mental pain and mental anguish;

9.1.8. Punitive damages;

9.1.9. Liquidated damages, to the extent permitted at law;

9.1.10. Attorneys' fees;

9.1.11. All costs of court expended herein;

Respectfully submitted

SHELLIST | LAZARZ | SLOBIN LLP

/s/ *Todd Slobin*

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